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DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval
Texas Medicaid State Plan Amendment (SPA) 13-0045-MM2
and
Texas Children's Health Insurance Program SPA 13-0035

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS

ACTION: Notice of Hearing: Reconsideration of Disapproval

SUMMARY: This notice announces an administrative hearing to be held on August 14, 2014, at the Department of Health and Human Services, Centers for Medicare and Medicaid Services, Division of Medicaid & Children's Health, Dallas Regional Office, 1301 Young Street, Room #801, 8th Floor Dallas, Texas 75202 to reconsider CMS' decision to disapprove Texas' Medicaid SPA 13-0045-MM2 and the CHIP SPA 13-0035.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT:

Benjamin R. Cohen, Presiding Officer

CMS

2520 Lord Baltimore Drive

Suite L

Baltimore, Maryland 21244

Telephone: (410) 786-3169

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider CMS' decision to disapprove the Texas Medicaid SPA 13-0045-MM2 and the Children's Health Insurance Program (CHIP) SPA 13-0035 which were submitted to the Centers for Medicare and Medicaid Services (CMS) on

December 31, 2013 and disapproved on March 31, 2014. In part, these SPAs request CMS approval of the state's proposed alternative single, streamlined application, both a paper version and online version, for completing an eligibility determination based on modified adjusted gross income (MAGI). Specifically, Texas's proposals requiring all applicants to submit information on assets and provide detailed information on absent parents make the application longer and the information is not necessary for completing an eligibility determination based on MAGI.

The issues to be considered at the hearing are:

- Whether Texas Medicaid SPA 13-0045-MM2, complied with the statutory requirement in section 1902(a)(19) of the Social Security Act (the Act), under which the state plan must assure that eligibility for care and services under the plan will be determined and provided in a manner consistent with the simplicity of administration and the best interests of the recipients. Requiring applicants to provide additional detailed information, which is not necessary for determining their eligibility for coverage, is inconsistent with simplicity of administration of the state plan and is not in the best interests of Medicaid recipients or applicants.
- Whether Texas CHIP SPA 13-0035, complied with section 2101(a) of the Act which specifies that the state plan must assure that eligibility for care and services must be provided in an effective and efficient manner. Requiring applicants to provide additional detailed information, which is not necessary for determining their eligibility for coverage, is inconsistent with simplicity of administration of the state plan and is not in the best interests of CHIP recipients or applicants.

- Whether the state failed to comply with section 1902(e)(14)(C) of the Act, as added by section 2002 of the Affordable Care Act, and section 2102(b)(1)(B)(v) of the Act, as added by section 2101 of the Affordable Care Act, which prohibit the use of asset or resource tests as criteria for Medicaid and CHIP eligibility among eligibility groups subject to MAGI, including children, pregnant women, parents, and, if eligible in a state, other nondisabled, nonelderly adults. Consistent with these statutory provisions, questions about assets and resources were not included in the Secretary's model single streamlined application, which was released on April 30, 2013.
- Whether the state complied with the requirements of sections 1902(a)(4) and 2101(a) of the Act, as implemented in 42 CFR 435.907 and 42 CFR 457.330, for approval of an alternative single, streamlined application. While an alternative application may be tailored to accommodate state preferences and policies, it must also reflect the general principles of the model application and must comply with the applicable provisions of law and regulation. The regulations at 42 CFR 435.907 and 42 CFR 457.330 note specifically that the alternative application may be no more burdensome on the applicant than the model application. CMS guidance released June 18, 2013 further clarified that the application may only include questions that "are necessary for determining eligibility for coverage in a Qualified Health Plan (QHP) and all insurance affordability programs, or the administration of these programs."

Section 1116 of the Act and federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a

state plan or plan amendment. CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Texas announcing an administrative hearing to reconsider the disapproval of its SPAs reads as follows:

Ms. Kay Ghahremani
State Medicaid Director
Texas Health and Human Services Commission
P.O. Box 13247
Austin, TX 78711

Dear Ms. Ghahremani:

I am responding to your request for reconsideration of the decision to disapprove Texas's Medicaid state plan amendment (SPA) 13-0045-MM2 and the Children's Health Insurance Program (CHIP) SPA 13-0035, which were submitted to the Centers for Medicare and Medicaid Services (CMS) on December 31, 2013 and disapproved on March 31, 2014. I am scheduling a hearing on your request for reconsideration to be held on August 14, 2014, at the Department of Health and Human Services, Centers for Medicare and Medicaid Services, Division of Medicaid & Children's Health, Dallas Regional Office, 1301 Young Street, Room #801, Dallas, Texas 75202.

In part, these SPAs request CMS approval of the state's proposed alternative single, streamlined application, both a paper version and online version, for completing an eligibility determination based on modified adjusted gross income (MAGI). Specifically, Texas's proposals requiring all applicants to submit information on assets and provide detailed information on absent parents make the application longer and the information is not necessary for completing an eligibility determination based on MAGI.

In your request for reconsideration, you described changes that the state is considering with respect to these SPAs, and we will continue to talk with you about these changes. In the event that CMS and the state come to agreement on resolution of the issues, which formed the basis for disapproval, these SPAs may be moved to approval prior to the scheduled hearing.

The issues to be considered at the hearing are:

- Whether Texas Medicaid SPA 13-0045-MM2, complied with the statutory requirement in section 1902(a)(19) of the Social Security Act (the Act), under which the state plan must assure that eligibility for care and services under the plan will be determined and provided in a manner consistent with simplicity of administration and the best interests of the recipients. Requiring applicants to provide additional detailed information, which is not necessary for determining their eligibility for coverage, is inconsistent with the simplicity of administration of the state plan and is not in the best interests of Medicaid recipients or applicants.
- Whether Texas CHIP SPA 13-0035, complied with section 2101(a) of the Act which specifies that the state plan must assure that eligibility for care and services must be provided in an effective and efficient manner. Requiring applicants to provide additional detailed information, which is not necessary for determining their eligibility for coverage, is inconsistent with simplicity of administration of the state plan and is not in the best interests of CHIP recipients or applicants.
- Whether the state failed to comply with section 1902(e)(14)(C) of the Act, as added by section 2002 of the Affordable Care Act, and section 2102(b)(1)(B)(v) of the Act, as added by section 2101 of the Affordable Care Act which prohibit the use of asset or resource tests as criteria for Medicaid and CHIP eligibility among eligibility groups subject to MAGI, including children, pregnant women, parents, and, if eligible in a state, other nondisabled, nonelderly adults. Consistent with these statutory provisions, questions about assets and resources were not included in the Secretary's model single streamlined application, which was released on April 30, 2013.

- Whether the state complied with the requirements of sections 1902(a)(4) and 2101(a) of the Act, as implemented in 42 CFR 435.907 and 42 CFR 457.330, for approval of an alternative single, streamlined application. While an alternative application may be tailored to accommodate state preferences and policies, it must also reflect the general principles of the model application and must comply with the applicable provisions of law and regulation. The regulations at 42 CFR 435.907 and 42 CFR 457.330 note specifically that the alternative application may be no more burdensome on the applicant than the model application. CMS guidance released June 18, 2013 further clarified that the application may only include questions “that are necessary for determining eligibility for coverage in a Qualified Health Plan (QHP) and all insurance affordability programs, or for the administration of these programs.”

If the hearing date is not acceptable, I would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by federal regulations at 42 CFR part 430.

I am designating Mr. Benjamin R. Cohen as the presiding officer. If these arrangements present any problems, please contact the Mr. Cohen at (410) 786-3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the state at the hearing.

Sincerely,

Marilyn Tavenner
Administrator

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18)
(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance
Program.)

Dated: June 27, 2014.

Marilyn Tavenner,

Administrator,

Center for Medicare & Medicaid Services.

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